

# UNOFFICIAL COPY



This instrument prepared by  
(and after recording return to)  
George M. Covington  
500 North Western Avenue  
Suite 204  
Lake Forest, IL 60045

Doc#: 0335231165  
Eugene "Gene" Moore Fee: \$58.50  
Cook County Recorder of Deeds  
Date: 12/18/2003 02:15 PM Pg: 1 of 18

## CONSERVATION RIGHT

THIS CONSERVATION RIGHT, dated 12-11, 2003, by and  
LASALLE BANK NATIONAL ASSOCIATION, as successor trustee to American National  
Bank and Trust Company of Chicago, as trustee under trust agreement dated August 20, 1993,  
and known as trust No. BV-012195 (hereinafter "Grantor") and LANDMARKS  
PRESERVATION COUNCIL OF ILLINOIS, an Illinois not-for-profit corporation ("Grantee");

### W I T N E S S E T H:

WHEREAS, Grantor is the owner of the land (the "Real Property") described in  
Exhibit "A" which Real Property is improved with a structure (the "Building"), more fully  
described in Exhibit "B", the Real Property and the Building are hereinafter collectively referred  
to as the "Premises."

WHEREAS, Grantee is an Illinois not-for-profit corporation and is a qualifying recipient  
of qualified conservation contributions under Section 170(b), (f) and (h) of the Internal Revenue  
Code of 1986 (the "Code"), and its purposes include the preservation of buildings, structures and  
sites of historical, architectural, and cultural significance.

WHEREAS, the Building is one of architectural significance, containing features  
described in greater detail in Exhibit "B." Certain portions of the Building specifically listed on  
the attached Exhibit B are referred to herein as the "Protected Elements." Furthermore, the  
Building is located in a high visibility location at which its unique appearance and scale of  
construction are important assets to the City of Chicago and its immediate neighborhood. The  
Grantor desires to preserve the Protected Elements in their entirety, to prevent the destruction of  
the Building, and to prevent the alteration of the size, profile and silhouette of the Building. The  
Grantor further desires to preserve the Building in its present design and condition, subject to  
appropriate necessary maintenance.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and the mutual covenants  
and terms, conditions, and restrictions hereinafter set forth and other good and valuable  
consideration, receipt of which is hereby acknowledged, Grantor hereby does grant, give,  
convey, bargain and sell unto Grantee, its successors and assigns, irrevocably forever, a  
Conservation Right, in perpetuity, in and to the aforesaid Premises, for the purposes of  
preserving the Protected Elements and accomplishing the other objectives set forth herein on the  
following terms and conditions.

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1. Demolition. Grantor shall not demolish, remove or raze the Building or any portion of the Protected Elements.

2. Alteration. Without the prior written permission of Grantee, executed by a duly authorized officer, which written permission or refusal to grant such permission, including a statement of reasons for refusal, shall be delivered to Grantor by Grantee within thirty (30) days of receipt of Grantor's written request for such approval, there shall be:

- (a) no partial demolition or removal of the Building;
- (b) no alteration of the exterior of the Building of a nature requiring the issuance of a building permit;
- (c) no change in the Protected Elements, including (without limitation) any alteration, partial removal, construction, remodeling or physical or structural change, or change in color or surfacing with respect to the appearance or construction of the Protected Elements;
- (d) no addition of signs, fences or awnings to the Protected Elements;
- (e) no expansion or reduction of the Building either horizontally or vertically;
- (f) no chemical cleaning or sandblasting of the Protected Elements.

3. Maintenance. Grantor shall promptly perform all necessary maintenance on the Building and the Protected Elements to preserve their appearance and structural soundness and to prevent their deterioration. Without limiting the foregoing, Grantor shall maintain the Premises in accordance with all applicable building and fire codes and shall keep the Premises free of any violation of such codes. Grantor shall also maintain all mechanical systems in the Building (including electrical, plumbing, heating and air-conditioning) in good repair in order to prevent deterioration of the Building or the Protected Elements.

4. Specification of Materials. In providing its written authorization for all work to be performed by Grantor hereunder, Grantee may specify all materials, methods, cleaning substances and colors to be used in any such work.

5. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be materially damaged or destroyed by casualty, the Grantor shall notify the Grantee in writing within one (1) day of the damage or destruction, such notification including a description of what, if any, emergency work has already been completed. For purposes of this instrument, the term "casualty" is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165(c)(3) of the Code (construed without regard to the legal status, trade, or business of the Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without the Grantee's prior written approval of the work. Within four (4) weeks of the date of damage or destruction,

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the Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to the Grantor and the Grantee which shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Protected Elements and/or reconstruction of damaged or destroyed portions of the Premises; and
- (c) a report of such restoration or reconstruction work necessary to return the Premises to the condition existing immediately prior to the casualty. If in the opinion of the Grantee, after reviewing such report, the purpose and intent of this Conservation Right will be served by such restoration/reconstruction, the Grantor shall within eighteen (18) months after the date of such change or destruction complete the restoration of the Premises in accordance with plans and specifications consented to by the Grantee up to at least the total of the casualty insurance proceeds. Grantee has the right to contribute funds toward the costs of restoration of partially destroyed premises above and beyond the total of the casualty insurance proceeds as may be necessary to restore the appearance of the Premises, and such additional costs shall constitute a lien on the Premises until repaid by Grantor.

6. Grantee's Remedies Following Casualty Damage. The foregoing notwithstanding, in the event of damage resulting from casualty, as defined in Section 5, which is of such magnitude and extent as to render restoration of the Premises impossible using all applicable insurance proceeds and other funds available to Grantor (including any funds which Grantee may elect to contribute), as determined by Grantee by reference to bona fide cost estimates, then

- (a) Grantee may elect to reconstruct the Building using insurance proceeds, donations, or other funds received by Grantor or Grantee on account of such casualty, but otherwise at its own expense (such expense of Grantee to constitute a lien on the Premises until repaid in full); or
- (b) Grantee may choose any salvageable portions of the Building and remove them from the Premises, and petition for extinguishment of this Conservation Right Building pursuant to Section 22 hereof. Upon such extinguishment, this instrument shall lapse and be of no further force and effect, and Grantee shall execute and deliver to Grantor acknowledged evidence of such fact suitable for recording in the land records of Cook County, Illinois, and Grantor shall deliver to Grantee a good and sufficient Bill of Sale for portions of the Buildings as may have been chosen by Grantee for salvage.

7. Inspection. Representatives of Grantee may enter the Premises and inspect the Building (including the interior thereof) at reasonable times upon reasonable notice for the purpose of determining Grantor's compliance with this Conservation Right.

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8. Delivery to Condominium Purchasers. Grantor shall deliver a copy of this Conservation Right to each purchaser of any condominium within the Building, should a declaration of condominium ownership ever be filed for the Premises.

9. Insurance. The Grantor shall keep the Premises insured by an insurance company rated "A+" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a structure such as the Building. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantor shall deliver to Grantee fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. Grantee shall have the right to provide insurance at the Grantor's cost and expense, should Grantor fail to obtain same. In the event Grantee obtains such insurance, the cost of such insurance shall be a lien on the Premises until repaid by Grantor.

10. Real Estate Taxes. Grantor shall promptly pay before delinquency all real estate taxes and special assessments assessed and levied against the Premises on or prior to the due date, provided, however, that Grantor may challenge any proposed levy of real estate taxes or special assessments if Grantor complies with all requirements of law necessary to prevent the sale of the Premises during the pendency of such challenge. Grantee shall have the right to pay such real estate taxes and special assessments at any time that such taxes and assessments may be delinquent. In the event Grantee makes such payment, there shall be a lien in Grantee's favor on the Premises in the amount thereof until such amount is repaid by Grantor.

11. Accessibility. Grantor shall make any portion of the Protected Elements located inside the Building publicly accessible not less than 4 days (10:00 a.m. to 4:00 p.m.) per calendar year, and public access may be in the form of sponsored, guided tours conducted by Grantee or Grantee's agent.

12. Indemnity. Grantor shall defend, indemnify and hold Grantee harmless from any liability, costs, attorneys' fees, judgments or expenses to the Grantee or any officer, employee, agent or independent contractor of the Grantee resulting or caused in any way by reason of Grantee's acceptance of this Conservation Right, including, without limitation, from actions or claims of any nature by third parties arising from defaults under this Conservation Right by the Grantor, or arising out of the ownership, possession, or exercise of rights under this Conservation Right (including any such costs and expenses incurred by Grantee in connection with preserving the validity or priority of this Conservation Right), excepting any such matters arising solely from the negligence of the Grantee. In the event that Grantor is obligated to indemnify Grantee hereunder, the amount of such indemnity, until satisfied, shall constitute a lien on the Premises.

13. Mechanics Liens. Grantor shall keep the Premises free from any mechanics liens. If any such liens are placed against the Premises, Grantor shall promptly cause them to be

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released or, in the alternative, shall provide Grantee with title insurance reasonably acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantor fails to provide Grantee with title insurance over the lien. Grantee shall have a lien on the Premises in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.

14. Grantee's Covenants. In furtherance of this Conservation Right herein granted, Grantee covenants:

(a) Grantee shall periodically, at reasonable intervals in Grantee's discretion, inspect the Protected Elements and the entire Building.

(b) Grantee may, prior to the fortieth anniversary of the date of this Conservation Right and at such other times as Grantee deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/13-118, for the purpose of preserving the lien of this Conservation Right in perpetuity. Nothing contained in this paragraph shall be deemed to constitute an acknowledgment that any such recording is necessary, however, and Grantor and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Conservation Right.

(c) In exercising any authority created by this Conservation Right to inspect the Premises, the Building, or the Protected Elements; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, in addition to such other standards as Grantee may apply, Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, issued by and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the "Standards") and such state or local standards as may be considered appropriate by Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally, or culturally significant areas. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work and the minimum maintenance program described in Section 3. In the event the Standards are abandoned or materially altered or otherwise become, in the sole judgment of the Grantee, inappropriate for the purposes set forth above, the Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

15. Remedies.

(a) In the event of a violation of any representation, warranty, covenant or other provision of this Conservation Right, in addition to any remedies now or hereafter provided by law Grantee may, following reasonable notice to Grantor, institute a suit for injunctive relief, specific performance or damages, enter upon the Premises to correct any such violation, and hold Grantor and Grantor's successors, heirs and assigns in title responsible for the cost thereof, or expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Premises. Without

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limiting the generality of the foregoing, in the event that Grantor fails to perform its obligation to maintain the Premises or the Protected Elements, Grantee shall be entitled to damages in the amount estimated by an architect licensed in the State of Illinois as selected by Grantee as the cost of restoring or repairing the Premises. In the event Grantor is adjudicated to have violated any of Grantor's obligations herein, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with the enforcement of its rights, including court costs and attorneys' fees. The exercise by Grantee of one remedy hereunder shall not have the effect of waiving any other remedy and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time. All damages, costs, and expenses awarded to Grantee hereunder shall constitute a lien against the Premises until repaid by Grantor. Grantee shall have the right, but not the obligation, to record a notice of any lien which Grantee may claim to have against the Premises.

(b) Grantor's sole remedy in the event of a failure by Grantee to perform any of its covenants herein contained shall be, if such failure shall continue for ten (10) days after written notice thereof to Grantee, to institute a suit for injunctive relief or specific performance. Grantor hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee shall in no way affect the validity of this Conservation Right or any of the other covenants contained herein and shall not serve as a defense against the exercise of any rights of Grantor hereunder or provide a set-off against any claim by Grantor hereunder.

16. Assignability. Grantor agrees that Grantee may, in its discretion, and without prior notice to Grantor, convey and assign this Conservation Right to an agency of the State of Illinois, to a unit of local government, or a not-for-profit corporation or trust whose primary purposes include the preservation of buildings of historical, architectural or cultural significance, which is an eligible donee under Section 170 of the Internal Revenue Code. Subject to the provisions of Paragraph 22 hereof, the parties further agree that this Conservation Right shall not be released to the Grantor or its successors or assigns without the consent of the Illinois Attorney General, which consent shall be appended to such release.

17. Duration. This Conservation Right shall be effective in perpetuity.

18. Runs with the Land. The obligations imposed by this Conservation Right shall be deemed to run as a binding servitude with the land. This instrument shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument after such person shall cease to have any interest in the Premises by reasons of a bona fide transfer for full value, except that such a transfer shall not relieve any person from liability arising from acts or omissions committed prior to such transfer.

19. Eminent Domain. In the event that an eminent domain proceeding is filed against a portion of or all of the Premises, Grantor and Grantee agree that the Grantee may appear as an additional party in the eminent domain proceeding and may participate fully in the litigation for the purposes of proving and recovering the damages caused to the Grantee by the eminent

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domain action. In the event that an award is entered which assumes that this Conservation Right is not in effect, Grantee shall be entitled to share in the award to the extent provided in Section 20 hereof.

20. Stipulated Value of Grantee's Interest. Grantor acknowledges that upon execution and recording of this Conservation Right, Grantee shall be immediately vested with a real property interest in the Premises and that such interest of Grantee shall have a stipulated fair market value, for purposes of allocating net proceeds in an extinguishment pursuant to Paragraph 22, equal to the ratio between the fair market value of the Conservation Right and the fair market value of the Premises prior to considering the impact of the Conservation Right (hereinafter the "Conservation Right Percentage") as determined in the Qualified Appraisal provided to the Grantee pursuant to Paragraph 21. Upon submission of the Qualified Appraisal, the Grantor and Grantee shall sign an instrument verifying the Conservation Right Percentage and record it as an amendment to this Conservation Right. In the event Grantor does not claim a charitable gift deduction for purposes of calculating federal income taxes and submit a Qualified Appraisal, the Conservation Right Percentage shall be fifty percent.

21. Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in Section 170(h) of the Internal Revenue Code, Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in Section 170(a)(1) of the Internal Revenue Code) of the fair market value of this Conservation Right. Upon receipt of the Qualified Appraisal, this fully executed Conservation Right, and any endowment requested hereunder by Grantee, Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service and submitted to the Grantee by Grantor.

22. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Premises may make impossible the continued ownership or use of the Premises for the preservation and conservation purposes and necessitate extinguishment of the Conservation Right. Such a change in conditions includes, but is not limited to, partial or total destruction of the Buildings or the Protected Elements resulting from a casualty of such magnitude that Grantee approves demolition as provided in Sections 5 and 6. Such an extinguishment must comply with the following requirements:

- (a) The extinguishment must be the result of a final, non-appealable judicial proceeding;
- (b) Grantee shall be entitled to share in any net proceeds resulting from or related to the extinguishment in an amount equal to the Conservation Right Percentage determined pursuant to Section 20 multiplied by the net proceeds.
- (c) Grantee agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other buildings, structures, or sites having historical, architectural, cultural, or aesthetic value and significance to the people of the State of Illinois.

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(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale, financing or exchange by Grantor of any portion of the Premises after the extinguishment, but shall specifically exclude any preferential claim of a Mortgagee under Section 23.

23. Subordination of Mortgages. Grantor and Grantee agree that all mortgages and rights in the Premises of all mortgagees and holders of other liens and encumbrances (collectively "lienholders") are subject and subordinate at all times to the rights of the Grantee to enforce the purposes of this Conservation Right. Grantor represents and warrants that it has provided a copy of this instrument to all lienholders as of the date hereof, and the agreement of each lienholder to subordinate its mortgage to this Conservation Right is attached hereto. The following provisions apply to all Mortgagees (or hereinafter defined) now existing or hereafter holding a mortgage on the Premises:

(a) If a mortgage grants to a Mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to this Conservation Right.

(b) If a Mortgagee has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to Grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Conservation Right.

(c) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under this Conservation Right.

(d) Before exercising any right or remedy due to breach of this Conservation Right, except the right to enjoin a violation hereof, Grantee shall give all Mortgagees of record written notice describing the default, and the Mortgagees shall have sixty (60) days thereafter to cure or cause to cure of the default, except where such default poses an imminent threat to the Building or the Protected Elements.

(e) Nothing contained in the above paragraphs or in this Conservation Right shall be construed to give any Mortgagee the right to extinguish this Conservation Right by taking title to the Premises by foreclosure or otherwise.

(f) For purposes of this instrument, the term Mortgagee shall include only the holder of a bona fide indebtedness secured by a mortgage or trust deed, provided that such holder is an institutional lender or other third party unrelated to Grantor.



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24. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice, demand, letter, or bill relating to the Premises received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice, demand, letter, or bill, where compliance is required by law.

25. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Premises and provide the opportunity for Grantee to explain the terms of this Conservation Right to potential new owners prior to sale closing.

26. Statutory Authority. This instrument is made pursuant to Public Act 80-584, the Real Property Conservation Rights Act, as amended, 765 ILCS 120/0.01-120/6, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties that this instrument constitutes a charitable trust, a preservation restriction, a common law easement in gross, a public easement under 35 ILCS 200/9-145(e), and an easement and covenant running with the land under 35 ILCS 200/22-70.

27. Notices. Any notice called for herein shall be in writing and shall be mailed postage prepaid by personal delivery or by registered or certified mail with return receipt requested, or hand delivered and receipted. If to Grantor, then at c/o Simon Edelstein, Esq., 939 West Grace, Chicago, IL 60613, and if to Grantee, then at Landmarks Preservation Council of Illinois, 53 West Jackson Boulevard, Chicago, Illinois 60604, Attn: President; with a copy thereof to George M. Covington, 500 North Western Avenue, Suite 204, Lake Forest, Illinois 60045. Each party may change its address set forth herein by a notice to such effect to the other party. The failure to serve a change of address notice shall not waive the notice requirement. For purposes of this section, delivery by commercial messenger service or overnight courier shall be deemed personal delivery.

28. Compliance with Applicable Ordinances. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between any such ordinance and the terms hereof, the Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the City of Chicago or other appropriate authority to accommodate the purposes of both this instrument and such ordinance.

29. Recording. A copy of this Conservation Right shall be recorded with the Cook County Recorder of Deeds and copies shall be furnished by the Grantor to the Illinois Attorney General, Charitable Trust Division and the Illinois Historic Preservation Agency.

30. Plaque. At any time after the date hereof, Grantee shall have the right to install a plaque of suitable design, not larger than 8 1/2" x 11" on the Premises, at a point easily visible by the public, from a public way, which plaque shall name the architect, the date of construction and state that the Premises are subject to a Conservation Right held by the Landmarks Preservation Council of Illinois.

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31. No Further Alienation. Grantor acknowledges that the subject matter of this conveyance is a perpetual donation to charity which can no longer be transferred, hypothecated or subjected to liens or encumbrances by the Grantor. Nothing herein shall be deemed to prohibit or restrict a conveyance of the Premises.

32. Reimbursement of Grantor's Expenses. Grantor shall reimburse Grantee for reasonable costs and expenses of processing or responding to any and all requests by Grantor for modifications or amendments of this Conservation Right, waivers of any provision contained herein, or approval of any action required by this instrument to be approved by Grantee. Such reimbursement shall include, without limitation, reasonable fees of attorneys, architects, engineers, and other professionals retained by Grantee, and compensation at reasonable levels for staff time of employees of Grantee.

33. Miscellaneous.

(a) In the event that any provision of this Conservation Right is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect any other provision, and the other provisions hereof shall continue in full force and effect.

(b) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained as provided in the Act.

(c) Except as expressly provided herein, nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any right to enter on the Premises or into the Building.

(d) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Premises may be developed to a use more intensive (in terms of height, bulk, or other objective criteria regulated by such ordinances) than the Premises are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Premises during the term hereof, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of this Conservation Right.

(e) For purposes of furthering the preservation of the Protected Elements and Building and of furthering the other purposes of this instrument, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of this instrument in writing without notice to any party; provided, however, that no such amendment shall limit the perpetual duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon the execution thereof by Grantor and Grantee.

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(f) The terms and conditions of this Conservation Right shall be referenced in any transfer of the property by the Grantor.

(g) This instrument reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

(h) The captions contained herein are for convenience only and shall not be deemed to be a part of this instrument.

(i) Grantor and the persons executing this instrument on behalf of Grantor represent and warrant that Grantor is the owner in fee simple of the Premises, Grantor and the persons executing on behalf of Grantor are fully authorized and empowered to execute and deliver this instrument, and there is no lien, encumbrance, contract, or governmental prohibition against the execution and delivery of this instrument and the performance by Grantor of all of Grantors' obligations hereunder.

IN WITNESS WHEREOF, on the date first shown above, the parties have caused this Conservation Right to be executed, sealed and delivered by as of the date first above written.

GRANTOR:

LASALLE BANK NATIONAL ASSOCIATION, as trustee aforesaid

Its: *Patricia E. Stevens*  
Trust Officer

ATTEST: ~~Attestation not required by~~  
~~Lasalle Bank National Association~~  
~~Bylaws~~

GRANTEE:

LANDMARKS PRESERVATION COUNCIL OF ILLINOIS, an Illinois not-for-profit corporation

By: *David A. Balaban*  
President

This instrument is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and engagements herein made in respect of the Trustee are enforceable by a trustee in its capacity as Trustee and are not enforceable by a trustee in its personal capacity. No personal liability or personal responsibility is to be held by the Trustee for any breach of the covenants or enforceable obligations herein made in respect of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in the instrument.

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Surrajina McKinley, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KATHLEEN E. SHIELDS personally known to me to be the Trust Officer ~~President~~ of LASALLE BANK NATIONAL ASSOCIATION, a corporation, as trustee aforesaid, ~~and~~ \_\_\_\_\_ personally known to me to be the Trust Officer of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Trust Officer ~~President and~~ Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of \_\_\_\_\_ of said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 11<sup>th</sup> day of December, 2003.

Surrajina McKinley  
Notary Public



My commission expires: \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David A. Bahlman, personally known to me to be the President of LANDMARKS PRESERVATION COUNCIL OF ILLINOIS, an Illinois not-for-profit corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President he signed and delivered the said instrument pursuant to authority given by the Board of Directors of said corporation as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1

LOTS 5, 6, AND 7 IN EWING ADDITION TO CHICAGO, SAID ADDITION BEING A SUBDIVISION IN BLOCK 17 IN BUSHNELL'S ADDITION TO CHICAGO IN THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1895, AS DOCUMENT NO 2288460

### PARCEL 2

THE NORTH 20 FEET OF LOT 5 IN THE ASSESSOR'S DIVISION OF THE NORTH 200 FEET OF BLOCK 17 IN BUSHNELL'S ADDITION TO CHICAGO, SAID LAND BEING ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID BLOCK 17 FEET SOUTH OF THE NORTH LINE OF SAID BLOCK AND RUNNING THENCE SOUTH ALONG SAID WEST LINE 20 FEET MORE OR LESS THENCE EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID BLOCK, 148.8 FEET MORE OR LESS TO THE ALLEY; THENCE NORTH ALONG THE WEST LINE OF SAID ALLEY 20 FEET MORE OR LESS TO A POINT 175 FEET SOUTH FROM THE NORTH LINE OF SAID BLOCK; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID BLOCK, 148.8 FEET MORE OR LESS TO THE PLACE OF BEGINNING, IN COCK COUNTY, ILLINOIS.

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## EXHIBIT "B"

### DESCRIPTION OF BUILDING AND PROTECTED ELEMENTS

#### DESCRIPTION OF BUILDING, 1117 N. Dearborn Street, Chicago, IL

Located within the National Register Gold Coast Historic District, the building at 1117 N. Dearborn Street was built by an unknown architect in the mid-to-late 1920s. With its axial symmetry, classical window details, Baroque, rusticated base and extensive areas of red brick, the building represents a Beaux Arts style, adapted to a high-rise residential complex. The building, which may originally have been a hotel, is similar in scale and detail to many Chicago hotels of the 1920s. The building at 1117 N. Dearborn thus represents a type of residential building that emerged in Chicago during the 1920s and remains a prominent and well preserved example of this type. Designed with a sparing and judiciously placed ornament, it successfully integrates historicist motifs with the design demands of the tall building.

Located on the east side of Dearborn Street between Elm and Cedar, 1117 N. Dearborn is an 8-story, steel framed structure with a rectangular massing. The overall footprint fills in the entire lot with the rusticated base, while the upper stories are set back on the north and south, leaving gaps for window frontages on these lateral facades. An elaborate brick and terra cotta cornice lines the front section of the building at the level of the roof, which is flat. The first floor contains commercial retail spaces behind the arched door and window openings of the base. The building is clad in red brick, with white terra cotta being used in the base, spandrels, cornice and certain other details. A prominent, highly ornamented stringcourse crowns the base. The windows, having been replaced, are one-over-one, double-hung, arranged singly and in pairs.

The front façade faces west onto Dearborn and is divided vertically into the one-story, double-height base and the seven-story upper section. The rusticated base is seven bays wide, with the main entrance occupying the central bay. The main entrance is slightly recessed into a beveled arch, inset with ornamental panels and crowned by a sculptural, human head. A spiral molding runs along the edge of this arch. The arches of the six lateral bays are crowned by keystone consoles. The two outer most bays of the base are slightly recessed and contain glass entrance doors with transoms. The remaining bays contain casement window pairs crowned by transoms. The stringcourse that runs along the top of the base contains a series of small, rectangular panels with a repeating rocaille motif. At the second and sixth bays, this upper part of the base bulges forward to produce shallow, hexagonal balconies for the floor above. A pair of consoles connects the outermost bays of the base to the narrower, brick façade of the upper floors. The narrower upper section is nine bays wide, with the outer four bays grouped into two pairs and articulated by terra cotta spandrels. The lowermost pairs of bays open to the hexagonal balconies, enclosed by iron railings. The spandrels contain rectangular, inset panels with large floret paterae. The remaining windows are surrounded by plain brick, except for the stone sills. The eighth floor windows receive more elaborate treatment. The two stringcourses lie below the eighth floor windows, and rectangular panels with relief paterae lie just below the windows of the five central bays, supporting the projecting windowsills. Projecting console pairs support the lower stringcourse at the central bay and around the outer bay pairs. The central window of the eighth floor is further elaborated by a terra cotta frame with lateral consoles and an ornamental motif above the hood molding. The lateral bay pairs of the eighth floor are framed by terra cotta pilasters and crowned by broken pediments. The crowning cornice is divided into three registers: a lower arcade of bricks; a series of closely-spaced modillions; and crowning row of shell-like finials.

The north and south facades, largely hidden from the street, contain double-hung windows, many of them paired, of two different sizes. The rightmost bay of the north façade and the leftmost bay of the south façade, visible from the street above the base, contain spandrels similar to those found in the outermost bays of the west façade. The cornice extends for approximately two bays from the front of the building on these facades.

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## PROTECTED ELEMENTS

### A. **Facades**

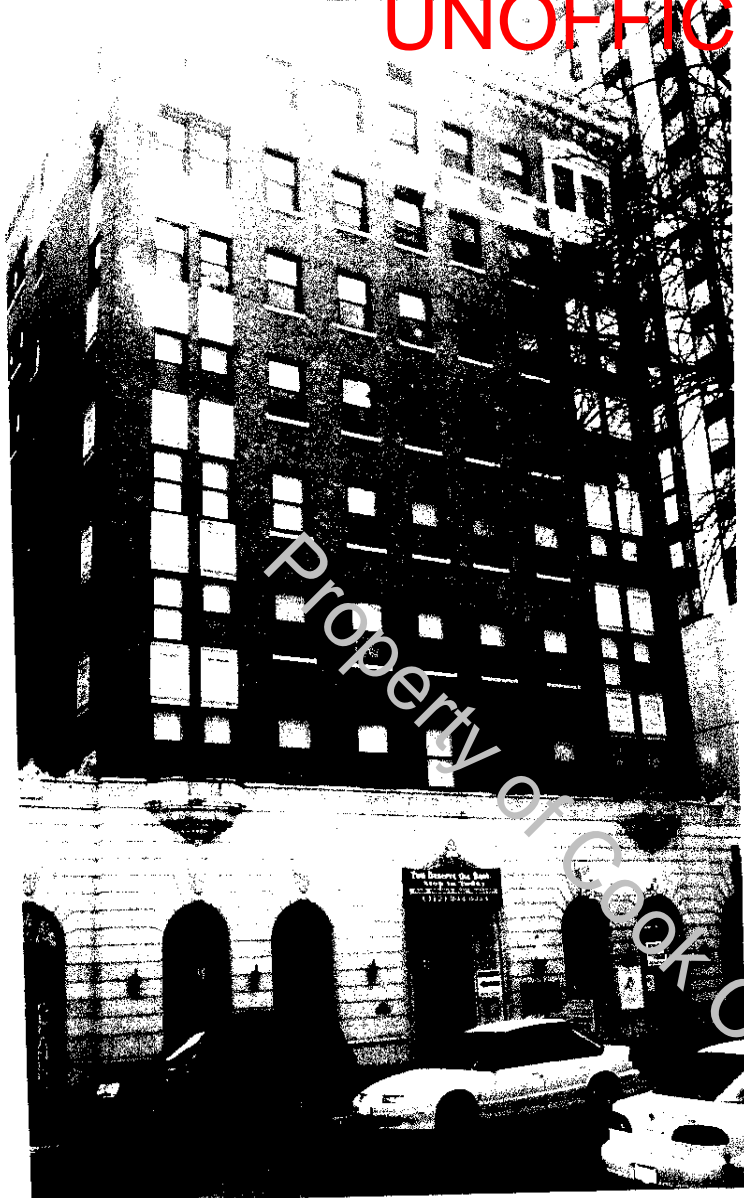
1. West façade elevation
2. West 26.80 linear feet of the north elevation façade
3. West 29.15 linear feet of the south elevation façade

### B. **Wall Elements**

1. Of particular note is the ornamental terra-cotta and masonry with double-hung windows, the terra-cotta spandrels and cornice with roofline and ground-floor ornamental treatment.

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## LENDER ACKNOWLEDGEMENT—PRESERVATION EASEMENT

BANK ONE (institution name),  
hereby acknowledges and agrees that it is the Mortgagee (Lender) under that Mortgage dated 2/15/96 and recorded on 3/29/96 as Document # 96237360 in COOK County, Illinois and the holder of the Note secured thereby, and that it hereby subordinates such mortgage to the rights of Landmarks Preservation Council of Illinois (Grantee) to enforce the purposes of this Preservation Easement subject to the following conditions and stipulations:

- (a) Except for the liens granted to Grantee pursuant to Section 10 and 12 of this Preservation Easement respecting the payment of real estate taxes and mechanics' liens respectively, any lien granted to Grantee shall be subordinate to the lien of the lender.
- (b) The provision of Section 22 of this Preservation Easement shall not be modified or amended without the express written consent of the Lender.
- (c) If the Mortgage grants to the Lender the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Lender shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the Mortgage is subordinate in priority to this Preservation Easement.
- (d) If the Lender has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Lender shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to Grantee until said Lender's debt is paid off, notwithstanding that the Mortgage is subordinate to the Preservation Easement.
- (e) Until the Lender or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Lender or purchaser shall have no obligation, debt, or liability under this Preservation Easement.
- (f) Before exercising any right or remedy due to breach of this Preservation Easement, except the right to enjoin a violation hereof, Grantee shall give the Lender written notice describing the default, and the Lender shall have sixty (60) days thereafter to cure or cause the cure of the default, except where such default poses an imminent threat to the Building or the Protected Elements
- (g) Nothing contained in the above paragraphs or in this Preservation Easement shall be construed to give the Lender the right to extinguish this Preservation Easement by taking title to the Premises by foreclosure or otherwise.

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Name: James E. Phyllyg  
 Title: First Vice President  
 Institution: Bank One Corporation  
 As Successor to American National Bank

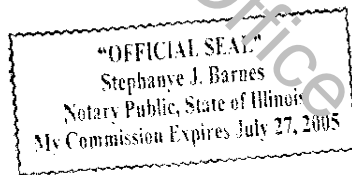
## LENDER ACKNOWLEDGEMENT-PRESERVATION EASEMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County of Cook, in the State of Illinois, do hereby certify that (lender's representative name) James E Phyllyg as (representative title) Senior Vice President of (institution name) Bank One, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given my hand and official seal, this 18 day of November, 2003.

Stephany J. Barnes  
 Notary Public



My Commission expires: